WASHINGTON
POLICY CENTER
Improving lives through market solutions

POLICY BRIEF

Citizens Guide to Seattle's Initiative 124: Imposing restrictive new wage, workload and hiring regulations on hotel employers in Seattle

Erin Shannon
Director, Center for Small Business and Labor Reform

October 2016

Key Findings

- Initiative 124 would impose an expansive new set of labor standards on certain hotel employers operating in the city of Seattle.
- The labor unions supporting Initiative 124 say it is about protecting hotel workers with mandates. However, the controversial, and unprecedented, measure also includes a variety of union-style labor standards that have nothing to do with the safety of hotel workers.
- Hotel employers would be responsible for prevention, in-house reports, and the refusal of service to alleged perpetrators. In essence, they would become de facto law enforcement. Employers would be forced to ban guests based on the unsubstantiated claims of workers.
- Initiative 124 would set new limits on how many square feet and the number of rooms hotel workers could clean in a shift, unless the worker is paid time and a half. If a hotel employer is willing to pay a higher wage, then it is okay for workers to clean beyond the limits specified in the measure as safe.
- Initiative 124 would require "large hotels" to provide "low-wage" employees with a specified level of health benefits or pay a minimum monthly stipend of $200. Initiative 124 would significantly expand the requirements of the federal Affordable Care Act.
- Under Initiative 124, if a hotel changes ownership, the new hotel employer would be required to give employees of the outgoing hotel first priority for employment. New hotel employers could not hire any workers off the street, or even transfer their own workers from another location for the first six months of operation.
- Hotel employers whose workers are unionized would be exempt from the burdensome provisions of Initiative 124.
- Hotel employers must maintain detailed records for each worker currently employed and for each former worker. The records must include each workers' hourly rate of pay for each work week; the amount of any additional wages paid to offset the cost of health insurance each month; and, the total square footage of guest rooms cleaned, the number of "strenuous room cleanings," the number of hours worked, and the employee's gross pay, on a daily basis. The employer must keep these records for at least three years.
- Initiative 124 would single out hotel employers for compliance with a restrictive set of one-size-fits-all labor regulations that appear to have little to do with protecting the health and safety of hotel workers. Instead, the measure benefits the UNITE HERE Local 8 union that drafted and sponsored the measure.

WASHINGTON POLICY CENTER
Improving lives through market solutions

POLICY BRIEF

Citizens Guide to Seattle's Initiative 124: Imposing restrictive new wage, workload and hiring regulations on hotel employers in Seattle

Erin Shannon
Director, Center for Small Business and Labor Reform

October 2016

Citizens Guide to Seattle's Initiative 124: Imposing restrictive new wage, workload and hiring regulations on hotel employers in Seattle

Erin Shannon
Director, Center for Small Business and Labor Reform October 2016

Introduction

This fall, voters in Seattle will decide whether to accept the union-drafted Initiative 124, called the Seattle Hotel Employees Health and Safety Initiative, to impose an expansive set of new work restrictions on certain hotel employers operating in the city.

The labor unions supporting Initiative 124 say the measure is about protecting the health and safety of hotel workers with mandates that would implement new worker restrictions and limit how many rooms housekeepers can clean during a shift.

However, the controversial, and unprecedented, measure also includes a variety of labor standards that have nothing to do with safety in Seattle hotels. Instead, the measure seeks to use the broad restrictions in Initiative 124 to incentivize hotels to become unionized so they could take advantage of the measure's union exemption from the burdensome regulations.

These broad restrictions include union-style mandates ranging from forcing new hotel businesses to hire certain workers, to requiring certain hotel employers to pay extra wages if they do not provide a specified level of health insurance benefits.

Undermining supporters' claims that Initiative 124 would protect the health and safety of hotel workers is the provision that exempts unionized employers from the regulations, except the rules about harassment and assault. Also undermining the measure is the provision that would allow workers to violate certain "safety" rules in exchange for higher pay.

For these reasons the unions sponsoring Initiative 124 appear hypocritical because they would not be covered by their own proposal.

This Citizens Guide summarizes the provisions of Initiative 124 and describes why the one-size-fits-all regulations it would mandate are over-reaching, unnecessary and would ultimately harm hotel workers, hotel guests and hotel employers.

Background

Initiative 124 was drafted by UNITE HERE Local 8, a union primarily representing Washington and Oregon workers in hotel, restaurants, food service and airport concession jobs. The union represents 16 percent of Seattle's hotel workers. Membership is mandatory. The union requires that any Local 8-covered workers who do not pay union dues or agency-fees will be fired.

The measure needed the signatures of 20,638 registered voters in the city to qualify for consideration from the Seattle City Council. After the campaign for Initiative 124 submitted sufficient valid signatures, the measure went before the Council.

Councilmembers had the option to pass the measure as written, reject it and pass a similar measure (in which case both measures would go before voters), or do nothing and send it to the ballot for voter approval.

The Council chose the latter option, voting unanimously to put the measure before voters in November. During the Council's debate over Initiative 124, socialist Councilmember Kshama Sawant was the only Councilmember who strongly advocated that the Council pass the proposed regulations into law instead of sending it to voters. Sawant called the Council's refusal a "lost opportunity for leadership."[1] Three weeks later the City Council and Seattle Mayor Ed Murray passed a resolution endorsing the measure. Only Councilmember Tim Burgess opposed the otherwise unanimous resolution, arguing the Council should remain neutral on the measure.[2]

UNITE HERE Local 8 implies the provisions of Initiative 124 should be passed as a quid pro quo for the publicly-funded expansion of the Washington State Convention Center. The City is proposing a $1.4 billion plan to build an addition to the Convention Center, with funding coming from the city's current hotel tax. A spokesperson for the union says the provisions of Initiative 124 will "ensure that this investment [of tax dollars] is consistent with our values…"[3]

The union's "values" do not extend to workers who are in a union. Initiative 124 exempts workplaces where workers are covered by a collective bargaining agreement. This means workers who must pay union dues would not receive the same so-called protections as their non-union counterparts.

---

1 "Panic buttons, health insurance for Seattle hotel workers up for vote in fall," by Daniel Beekman, *The Seattle Times*, July 25, 2016, at www.seattletimes.com/seattle-news/politics/hotel-workers-rights-initiative-headed-for-seattles-fall-ballot/.

2 "Mayor, Seattle City Council endorse I-124," by Mike Andrew, Seattle Gay News, August 19, 2016 at www.sgn.org/sgnnews44_34/page5.cfm.

3 "I-124 would protect women working in Seattle's hotels," The Stand, May 20, 2016 at www.thestand.org/2016/05/initiative-124-would-protect-seattle-women-working-in-hotels/.

This is not the first time the union executives of UNITE HERE Local 8 have sought a special exemption from rules they want to impose on others.

During Seattle's $15 minimum wage debate, UNITE HERE Local 8 supported a ballot measure sponsored by the 15 Now organization that exempted members of their union. UNITE HERE Local 8 executives justified the fact that their own members would not be covered by the $15 wage mandate the union was promoting by saying they were concerned with the "unintended consequence" of the 15 Now measure. They said their workers need the flexibility to negotiate with their employer.[4]

In this case the union position was rejected. The Seattle City Council passed a wage law that covered unionized workplaces.

Now UNITE HERE Local 8 union executives argue that they should be allowed to disregard the "protections" in Initiative 124 they say non-union hotel workers need.

Considering the unprecedented scope of Initiative 124, it is not surprising that labor unions would seek an exemption. There are two cities that have passed, or are considering, the type of work restrictions that Initiative 124 would impose, but none include the broad provisions of the measure proposed in Seattle. One city, Emerville, California passed a ballot measure in 2005 that mandates overtime for hotel employees cleaning more than 5,000 square feet in a day.

Los Angeles based UNITE HERE Local 11 is currently pushing a significantly scaled-down version of Initiative 124 in Long Beach, California. That proposal would require portable panic buttons for the hotel's female housekeepers and room attendants, as well as mandate overtime pay for any Long Beach hotel worker who cleans more than 4,000 square feet of hotel space in a single day.[5]

Seattle's Initiative 124 would go much further than any ordinance currently in effect or under consideration.

---

4 15Now decides to pursue signatures for charter amendment," by Natasha Chen, KIRO 7 News, April 27, 2016 at www.kiro7.com/news/15now-decides-pursue-signatures-charter-amendment/82083031.

5 "Long Beach eyes new ordinance on working conditions for hotel employees," by Andrew Edwards, *Press-Telegram*, September 10, 2016, at www.presstelegram.com/social-affairs/20160910/long-beach-eyes-new-ordinance-on-working-conditions-for-hotel-employees.

Policy Analysis

Initiative 124 would require hotel employers of certain sizes to comply with a broad set of new labor regulations. The measure consists of dozens of provisions listed under four parts. Union employers would be exempt from complying with all provisions except those in Part 1, which regulates how hotel employers handle allegations of harassment or assault by hotel guests.

Part 1: Recording and responding to allegations of violent crimes

Under Initiative 124, hotel employers with 60 or more guest rooms would be made responsible for prevention, in-house reports, and the refusal of service to alleged perpetrators of violent acts, such as sexual assault or harassment.

Employers would be required to provide panic buttons to all hotel employees who work in guest rooms with no other employees present. They would also be required to maintain a list of guests accused of harassing or assaulting a hotel employee for five years and to refuse to accommodate such guests for three years. Accused guests would be denied due process, and the worker would not be required to provide any evidence or substantiation of their allegations.

However, under Initiative 124, employers would not be allowed to contact the police to report such incidences without the permission of the employee. This provision would put an employer in the position of not reporting an alleged crime and then keeping a "black list" of people who have been accused.

It would also put hotel guests in the unfair position of being accused of a crime without the benefit of knowing what they have been accused of and by whom, and then being banned from certain establishments based on those unsubstantiated allegations. The right to face one's accuser is guaranteed by the United States Constitution: "In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him."

Most hotels in Seattle already equip their workers with safety alert systems or other preventative measures.[6] Initiative 124, however, would mandate that employers act as de facto law enforcement, without respecting civil rights or informing the police.

If a hotel employee reports harassment or assault by a guest, the proper step is for the employer to contact the police immediately.

---

6 "'Safety' initiative aims to force hotels to unionize," by Carla Murray, Starwood Hotels & Resorts, Crosscut, September 22, 2016, at http://crosscut.com/2016/09/safety-initiative-aims-to-force-hotels-to-unionize/.

Part 2: Restricting workloads or paying higher wages

The second part of Initiative 124 would set new limits on how many square feet and the number of rooms hotel workers could clean in a shift, unless the worker is paid time and a half. The provision would apply to hotels with 60 or more guest rooms.

Hotel housekeepers would be limited to cleaning 5,000 square feet of floor space in an eight-hour shift. However, if ten of the rooms (regardless of size) require "strenuous cleaning," meaning they are check-out rooms or stay-over rooms that include a cot, roll-out bed, pet bed or crib, the square footage they are allowed to clean is reduced by 500 for the tenth room and another 500 for every "strenuous room cleaning" thereafter. The measure's focus on square footage is abandoned with the ten room "strenuous cleaning" limit, as the total square footage of those rooms is not relevant, only the total number of rooms.

Workers who clean in excess of these limits must be paid time and a half for all hours worked that day. This exception means if a hotel employer is willing to pay a higher wage, then it is okay for hotel housekeepers to clean above the limits the measure says are needed to reduce injury rates. Earning a higher wage does nothing to prevent injury. The inclusion of this provision raises the question of whether the union's real goal is to demand higher wages for workers.

Calculating the daily allowable workload for each employee would be a significant burden for hotel employers. Most hotels assign workloads based on the number of rooms, not square footage. Under Initiative 124, hotel employers would be required to determine each worker's restricted workload limit using a complex formula of the total square footage of stay-over rooms that do not include a cot, roll-out bed, pet bed or crib, as well as the total number of check-out rooms and stay-over rooms that do include a cot, roll-out bed, pet bed or crib.

The composition of rooms that are check-out and stay-over with, or without cots, roll-out bed, pet beds or cribs, changes daily. This means hotel employers would be put in the nearly impossible position of calculating and changing each employee's workload on a daily basis.

Worker safety is already regulated under both state and federal laws. The extra restrictions in Initiative 124 are not needed and would impose unnecessary and costly burdens on employers. The fact that the specified safe workload limits could be exceeded simply by paying a higher wage reveals the true goal of this provision is not safety but forcing employers to pay even higher wages than mandated by Seattle's $15 minimum wage law.

Hotel employers whose workers are unionized would be exempt from this provision.

Part 3: Expanding health care benefits

Another provision of Initiative 124 would require hotels with 100 or more rooms to provide every "low-wage" employee who works "full-time" with a specified level of health benefits or pay a monthly stipend to workers.

Under Initiative 124, "large" hotel employers would pay "low-wage" workers who work "full-time" additional wages of at least $200 per month, adjusted annually for inflation, to help cover their health insurance costs. Based on the formula prescribed by the measure, some employers could pay more.

The measure defines "full-time" as those who work 80 hours per month (an average of 18.5 hours per week). "Low-wage" employees are defined as those whose total compensation from the hotel employer is 400 percent or less of the federal poverty line (FPL) for the size of their household. This means workers with incomes considerably higher than the FPL would qualify for the additional compensation.

The 2016 FPL for a one person household is $11,880, for two people it is $16,020, for three people it is $20,160 and for a household of four it is $24,300. An employee earning 400% of the FPL would make $47,520 (400 percent of $11,880) and would qualify for the additional compensation under Initiative 124, as would a family of two making $64,080, a family of three with an income of $80,640 and a family of four earning $97,200.

A family of four where one individual earns $97,200 a year is not "low-wage." Further, many households have two workers, but the measure specifies the additional compensation is based on what the hotel employer pays the worker, not on the worker's total household income. So a "low-wage" worker with more than one income-earner in the family and a household income greater than 400 percent of the FPL would still qualify for the extra pay from the hotel employer.

Hotels that provide "gold-level" health benefits for workers with "a premium or contribution cost to the employee of no more than 5 percent of the employee's gross taxable earnings" would not have to pay the extra wages. The measure does not define "contribution cost." Since premiums are the employee's monthly cost for the health plan, the logical conclusion is that "contribution costs" would be everything an employee would pay in addition to those premiums—deductibles, copayments and coinsurance. How does an employer calculate an employee's contribution costs? Hotel employers say the only way to accurately determine a worker's "contribution costs" would be to ask them for their medical bills each year to determine the total they paid in deductibles, copayments and coinsurance.

The lack of a clear definition for what constitutes an employee's "contribution costs" is of great concern; workers could find themselves with

no medical privacy as employers inspect their annual medical bills to ensure they are complying with the law.

Hotels in Seattle already comply with the federal Affordable Care Act. Initiative 124 would significantly expand the benefit requirements hotel employers must already provide workers. Policies that single out one industry with additional, costly burdens are unfair and do not serve the interests of the public.

Unions have exempted themselves from this requirement. Hotel employers whose workers are unionized would not have to comply with this provision.

Part 4: Hiring requirements

The fourth provision of Initiative 124 would remove hotel employers' ability to make important hiring decisions based on what is best for their business. Instead of choosing which employees to hire, new hotel employers with 60 or more guest rooms would be forced to hire employees from a "preferential hiring list."

Under Initiative 124, if a hotel changes ownership, the new employer would be required to give employees of the outgoing hotel first priority for employment. They could not hire just any worker, or even transfer their own employees from another location.

The incoming hotel employer must, for the first six months, hire from the list of workers provided by the outgoing hotel employer. Offers must be made in writing and kept by the employer for three years. They must employ those selected workers for a minimum of 90 days and may not terminate them without "just cause" during that time period. The measure does not define what would constitute "just cause."

If the incoming hotel owners determine they need fewer hotel employees, they would be forced to retain the inherited workers by seniority within each job classification. This provision follows the union model that rewards seniority over merit, as a newer, higher skilled or more productive employee could lose their job to one who has less qualifications except years of service at that particular hotel.

After 90 days, employers must provide each worker with a written performance evaluation, which the employer must keep on file for three years. If the employer opts against keeping a worker after the 90-day trial period, the employer would be forced to hire again from the "preferential hiring list" if any names remained in the job category for which they are hiring.

Washington is an "at will" state, meaning businesses may fire, and employees may quit, at any time, with or without notice or cause.[7] Initiative 124 would undermine the voluntary at-will principle, making Washington's job market more restrictive and making job creation more difficult.

The freedom of employers to choose whom they hire was part of the U.S. Supreme Court's 1937 decision upholding the constitutionality of the National Labor Relations Act (NLRA), based on the court's finding that the NLRA, "does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them."[8]

Legal scholars argue an employer's right to choose whom they hire, including whether to hire a predecessor's employees, is precisely why the NRLA was enacted and the very type of activity intended by Congress to protect. "Congress intended the NLRA to prevent states and locales from interfering with the employer's right to choose its employees…employer's free selection of employees has always been a fundamental part of national labor policy."[9]

Regardless of whether the NLRA preempts worker retention laws, such laws limit how employers manage their business and their workers. Employers should not be forced to hire any worker.

Hotel employers whose workers are unionized would be exempt from this provision.

Enforcement and penalties

The Seattle Office of Civil Rights would establish and enforce the new regulations under Initiative 124, but the measure would also allow private lawsuits to be filed in court. A complaint could be filed by any "person" claiming injury from a violation of the measure, with "person" defined as any individual, corporation, partnership, company, business, trust, estate, agency or any other legal entity, domestic or foreign. This means anyone, including a union, could file a lawsuit alleging violation of the law.

In a real world application, this means labor unions could sue hotel employers claiming violations of the law.

If an employer takes any "adverse" action against an employee within 90 days of the employee's exercise of their rights under Initiative 124, the employer is presumed guilty of retaliating against the worker. The employer must prove by "clear and convincing evidence" that the adverse action was

7 Washington State Department of Labor & Industries website, at www.lni.wa.gov/WorkplaceRights/ ComplainDiscrim/Termination/.

8 NLRB v. Jones & Laughlin Steel Corp., 301 U.S. at 45 (1937)

9 California Grocers Association v. City of Los Angeles, 52 Ca. 4th at 224

taken for a "permissible purpose" and not retaliation. Without proof of innocence, the employer is considered guilty under Initiative 124.

The record-keeping requirements under the measure are onerous. Hotel employers must maintain detailed records for each worker currently employed and for each former worker. The records must include each workers' hourly rate of pay for each work week; the amount of any additional wages paid to offset the cost of health insurance each month; and, the total square footage of guest rooms cleaned, the number of "strenuous room cleanings," the number of hours worked, and the employee's gross pay, on a daily basis. The employer must keep these records for at least three years.

The penalties for employers found to be out of compliance with Initiative 124 would be severe. Each workday an employer is found in violation of the initiative would be counted as a separate offense, with civil penalties ranging from $100 per day per employee to $1,000 per day per employee. These civil penalties do not include the damages that may be awarded to an employee.

Any penalties levied against an employer would be split between the Seattle Office of Labor Standards (50 percent), the employee (25 percent), and the "person" or union who filed the complaint (25 percent). So a labor union suing an employer would pocket 25 percent of the money.

Union exemption

Initiative 124 says that no individual worker and employer may agree to waive any of the requirements of the measure.

However, workers represented by a union can waive the requirements. This means an employer whose workers are unionized would have the freedom to avoid the limitations of Initiative 124 in exchange for compensation, benefits or work conditions they deem more valuable. This freedom and flexibility would be denied to non-union workers.

There are problems with the union exemption.

First, there is the inherent unfairness of allowing union-shop employers in the hotel industry to circumvent regulations with which their non-union competitors must comply.

Second, there is the injustice of giving union workers the option to negotiate their work conditions while denying non-union workers the same option.

Third, employers who want to take advantage of the union exemption could encourage employees to unionize and unsuspecting workers could find themselves paying union dues without realizing they would not be covered by the provisions of Initiative 124.

This is exactly what happened to hotel workers in Los Angeles. When the Los Angeles City Council voted in 2014 to pay hotel workers in that city a $15.37 minimum wage, many workers who supported the measure did not realize their union, UNITE HERE (Local 11), had exempted itself. Union members were outraged when they realized they would not benefit from the higher wage promised by their union. Many workers complain that not only are they earning a lower wage, they are now forced to pay union dues.[10]

Fourth, there is the insider interest of a labor union supporting a measure that would directly benefit them. UNITE HERE Local 8 drafted the measure and is the primary funder of the campaign to pass Initiative 124. The exemption clearly incentivizes employers to unionize so that they may avoid the costly mandates in Initiative 124. More unionizing would translate into more money for UNITE HERE Local 8.

If new laws are truly needed to protect the safety and health of workers in the hotel industry, those laws should apply to every worker.

Conclusion

The scope of Initiative 124 is much broader than proposed in any other jurisdiction in the country. The measure would single out hotel employers with a restrictive set of one-size-fits-all labor regulations that appear to have little to do with protecting the health and safety of hotel workers and much to do with financially benefiting the UNITE HERE Local 8 union that drafted the measure.

The inclusion of an exemption for unionized hotel employers, as well as the inclusion of a provision allowing a heavier workload for employees in exchange for higher pay, undermines supporters' claims that Initiative 124 is designed to protect the health and safety of hotel workers.

Also undermining the claims that Initiative 124 is about protecting workers is the fact the measure includes a variety of labor standards that have nothing to do with the health or safety of hotel workers. For example, the provision forcing new hotel employers to hire workers employed by the outgoing hotel, and the fact it prioritizes the hiring of those retention workers by seniority, reveals the union's self-serving goal of seeking to unionize hotels in Seattle, to the financial benefit of the union.

Public proposals like Initiative 124 that target certain industries and provide special carve outs are unfair and serve the private interests of union executives, but they do not serve the interests of the public.

10 "Outrage after big labor crafts law paying their members less than non-union workers," by Peter Jamison, *The Los Angeles Times*, April 9, 2016 at www.latimes.com/local/cityhall/la-me-union-minimum-wage-20160410-story.html

Published by Washington Policy Center

Washington Policy Center is an independent research organization in Washington state. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

Chairman	**Craig Williamson**
President	**Daniel Mead Smith**
Vice President for Research	**Paul Guppy**

If you have any comments or questions about this study, please contact us at:

Washington Policy Center
PO Box 3643
Seattle, WA 98124-3643

Online: www.washingtonpolicy.org
E-mail: wpc@washingtonpolicy.org
Phone: (206) 937-9691

About the Author

Erin Shannon is director of WPC's Center for Small Business and Labor Reform. Before joining Washington Policy Center in 2012, she was the Public Relations director of Washington state's largest pro-small business trade association, and was formerly a Legislative Correspondent for U.S. Congressman Randy Tate in Washington, D.C. Over the past 15 years Erin has appeared regularly in print, broadcast and radio media. She was a recurring guest on ABC's "Bill Maher's Politically Incorrect" until the show's cancellation in 2002, and participated in a live, on-stage version of Politically Incorrect in Seattle with Bill Maher. Erin has served as the spokesperson for several pro-small business initiative campaigns including Referendum 53, repealing increases in unemployment insurance taxes; Initiative 841, repealing the state's ergonomics rule; and Initiative 1082, to end the state's monopoly on workers' compensation. Erin holds a bachelor's degree in political science from the University of Washington.